



**KANSAS CERTIFICATE OF ENVIRONMENTAL LIABILITY RELEASE**

Based upon the representations and information provided in the Kansas Certificate of Environmental Liability Release Application, the Kansas Department of Health and Environment hereby releases the following person(s) from any liability for contribution, subrogation, or otherwise for any costs incurred for environmental response, investigation or remediation of the property specified below pursuant to the Contaminated Property Redevelopment Act ("ACT").

CERTIFICATE HOLDER:      <APPLICANT NAME>  
   <STREET ADDRESS>  
   <CITY, ST, ZIP>

This Certificate of Environmental Liability Release is granted only in connection with the Certificate Holder's interest in the following legally described property and is not transferrable to any other person or property. This certificate may be filed with the Register of Deeds to reflect the Certificate of Environmental Liability Release granted hereby for the environmental condition of the property.

CERTIFIED PROPERTY:      <LEGAL DESCRIPTION>  
   <STREET ADDRESS>  
   <CITY, COUNTY, KANSAS>

Issuance of this certificate is conditioned upon the Certificate Holder's ongoing compliance with the terms specified in the signed Application and the ACT. This Certificate of Environmental Liability Release may be revoked, the Certificate Holder may be subjected to administrative penalties, and the Secretary may take such actions necessary to protect human health or the environment if fraudulent information was provided to the Department by the Certificate Holder.

\_\_\_\_\_  
Leo G. Henning, Director  
Division of Environment  
Kansas Department of Health and Environment

\_\_\_\_\_  
Date

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me the undersigned, a Notary Public for Shawnee County, Kansas, came Leo Henning, Division of Environment Director and authorized representative of KDHE, who executed this document on behalf of KDHE, and such person duly acknowledged the execution of the same to be his act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year written above.

(NOTARY SEAL)      \_\_\_\_\_  
Notary Public in and for said County and State

Certificate No. \_\_\_\_\_



## Contaminated Property Redevelopment Act



### Certificates of Environmental Liability Release (CELRs)

- July 1, 2016
- Prospective purchasers of contaminated properties
- Municipalities, governmental entities, or lending institutions acquiring property through seizure, condemnation, foreclosure, or default
- State liability only
- Program guidance document and application:
  - [http://www.kdheks.gov/ber/policies/BER\\_RS\\_058.pdf](http://www.kdheks.gov/ber/policies/BER_RS_058.pdf)

## Brownfields & CELR – Supporting Redevelopment

- Both programs designed to encourage redevelopment of contaminated (or potentially contaminated) property for more productive use
- CELR can provide support to governmental entities following a Brownfields Targeted Assessment (BTA)
  - Market the ability to obtain a CELR to potentially interested purchasers of contaminated property
  - Unable to obtain a cleanup grant
- Brownfields can support a CELR application
  - BTA Phase I and Phase II can be used to meet a portion of the CELR requirements

## Eligibility



- Two fold
  - Property must be contaminated
    - Contamination does not have to exceed risk-based standards
  - Applicant is not the responsible party for the identified contamination

**\*\*\*Both conditions shall be met in order to be considered for a CELR\*\*\***

## Eligibility - Property Criteria

- ✓ Not retroactive; property acquired after July 1, 2016
- ✓ Contamination does not result from lead-based paint (LBP) or asbestos-containing material (ACM)
- ✓ Is not subject to Nuclear Energy Development and Radiation Control Act K.S.A. 48-1601
- ✓ Is not the source of contamination for a site listed or proposed for listing on the National Priorities List (NPL)
  - (i.e. Superfund sites under CERCLA)
- ✓ If the property is the contaminant **source** and is eligible for cleanup under the Kansas Storage Tank or Drycleaner Trust Funds, must be enrolled in the appropriate program



## Eligibility – Prospective Purchaser Criteria

- ✓ Does not currently own the property
  - CELR must be issued prior to ownership
  - Unless the current owner criteria is met
- ✓ Has not exacerbated the contamination
- ✓ No direct or indirect familial relationship with the owner or the party responsible for the contamination
- ✓ No contractual, corporate, or financial relationship with the owner or the party responsible for the contamination
  - Excludes that by which the property is conveyed or financed
- ✓ Has not provided indemnification or release of environmental liability to any other party
- ✓ Not the subject to a contract, agreement, or order with the intended purpose of performing investigation or remediation of contamination at the property

## Eligibility – Current Owner Criteria

(governmental entity or financial institution)

- ✓ Acquired property through seizure, condemnation, foreclosure or default; or
- ✓ Governmental entity or local municipality (State of Kansas, county, township, city, school district, etc.)
- ✓ Did not know and could not have reasonably foreseen the threat of contamination; or
- ✓ Did know of potential contamination and took reasonable steps to prevent exacerbation

## Eligibility – Current Owner Criteria

(governmental entity or financial institution)

- ✓ No direct or indirect familial relationship with the owner or the party responsible for the contamination
- ✓ No contractual, corporate, or financial relationship with the owner or the party responsible for the contamination
  - Excludes that by which the property is conveyed or financed
- ✓ Has not provided indemnification or release of environmental liability to any other party
- ✓ Not subject to a contract, agreement, or order with the intended purposed of performing investigation or remediation of contamination at the property.



# Environmental Liability Release



## KANSAS CERTIFICATE OF ENVIRONMENTAL LIABILITY RELEASE APPLICATION

Please read each section carefully to ensure a complete and accurate response. Any incorrect or incomplete sections could result in processing delays or render the application void. The applicant must be able to demonstrate and provide the necessary documentation (Section 4) that contamination exists on the property. If this requirement cannot be met, please do not proceed with the application process.

### Section 1. APPLICANT

Applicant Name:		Contact Name:	
Address:	City:	State:	Zip Code:
Primary Phone:	Alternate Phone:		
Email:			

The applicant as identified above ("APPLICANT"), hereby certifies to the State of Kansas that the APPLICANT is [mark only one box]

- ☐ a prospective purchaser  
☐ the current owner (must be a governmental entity or financial institution)

of real property ("PROPERTY") located at the address identified below and seeks a Certificate of Environmental Liability Release ("CELR").

Property Address:		
City (or Township):	County:	Zip Code:
Tax Lot # or Parcel Identification #:		
Legal Description:		

### Section 2. PROPERTY OWNERSHIP

If APPLICANT is the current owner, per Section 1, please check the following boxes [mark all that apply]:

- ☐ APPLICANT acquired the PROPERTY through seizure, condemnation, foreclosure or default.  
Date of PROPERTY acquisition: \_\_\_\_\_  
Please attach all documentation necessary for verification purposes.
- ☐ APPLICANT is the State of Kansas or subdivision thereof, a county, township, city, school district, or other political or taxing subdivision of the state.
- ☐ APPLICANT did not know and could not have reasonably foreseen the threat of contamination.
- ☐ APPLICANT knew of potential contamination on the PROPERTY and took reasonable steps to prevent the exacerbation of the identified contamination.

Please provide details in the space provided on page 2 about the known conditions of the property at the time of acquisition and any actions that may have been performed to address any identified contamination. Please provide supporting documentation, if available, for KDHE consideration.

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If APPLICANT is a prospective purchaser, per Section 1, provide the following PROPERTY ownership information.

Owner Name:		Contact Name:	
Address:	City:	State:	Zip Code:
Primary Phone:	Alternate Phone:		
Email:			
Anticipated Property Transfer Closing Date:			

### Section 3. CONFLICTS, AGREEMENTS, and INDEMNIFICATION

The APPLICANT affirms [mark all that apply]:

- ☐ no direct or indirect familial relationship with the current PROPERTY owner;
- ☐ no direct or indirect familial relationship with the party responsible for the contamination;
- ☐ no contractual, corporate, or financial relationship with the current PROPERTY owner or the party responsible for the contamination, other than that by which such APPLICANT'S interest in the PROPERTY was conveyed or financed;
- ☐ it has not entered into nor is the subject of any contracts, agreements, or orders with the intended purpose of performing investigation or remediation of contamination at the PROPERTY; and,
- ☐ it has not provided indemnification or release of environmental liability to any other party regarding contamination at the property.

[Not marking all of the boxes in Section 3 may render the APPLICANT ineligible for a CELR. Please provide an explanation in the space below for any unmarked boxes and provide supporting documentation for KDHE consideration].

# Environmental Liability Release

## Section 4. CONTAMINATION AND DOCUMENTATION

Documentation of the presence of contamination at the PROPERTY is required to issue a CELR. Please indicate which of the below documents have been completed and will be provided to KDHE for consideration [mark all that apply].

- ☐ A current Phase I Environmental Site Assessment prepared on behalf of the APPLICANT
- ☐ A current Phase II Environmental Site Assessment prepared on behalf of the APPLICANT.
- ☐ Other Environmental Assessment Reports which document the presence of contamination on the PROPERTY or any other information to facilitate KDHE's review.

The APPLICANT must provide a list of all reports and other documents, including those referenced in previous sections, to be submitted to KDHE in support of this application. Please indicate whether such reports and documents are enclosed with this application or if the APPLICANT prefers to upload via KDHE MoveIT web portal\*.

Document Title (Attach additional list as needed)	Enclosed		MoveIT
	Hard Copy	CD, flash drive	

\*KDHE will accept either hard copies or electronic copies (i.e., compact disc or flash drive) of the documents as attachments to this application. Alternatively, the APPLICANT may select to upload the documents via KDHE MoveIT web portal. If the APPLICANT selects the KDHE MoveIT option, following receipt of the application, KDHE will send an invite to the APPLICANT with instructions for uploading.

## Section 5. SIGNATURE

By signing this document, the undersigned acknowledges they are the authority to sign this application and certifies that [please mark all that apply]:

- ☐ the applicant is not the party responsible for the contamination;
- ☐ the applicant has not caused nor exacerbated the contamination on the PROPERTY;
- ☐ the information provided herein is true, accurate, and complete to the best of the applicant's knowledge;
- ☐ the applicant agrees to provide immediate notification to KDHE BER in the event new information becomes available that may be contrary to that provided herein; and,
- ☐ upon receiving a CELR, the applicant agrees to adhere to the future obligations set forth in KDHE BER Policy No. BER-RS-058

Please note, this application will not be approved if any of the boxes in Section 6 remain unchecked.

The undersigned has enclosed the appropriate application fee (mark only one).

☐ Class I CELR Property \$700    ☐ Class II CELR Property \$1,000    ☐ Class III CELR Property \$2,000

Providing false, inaccurate, or incomplete information to BER or failing to provide updated information as required may render the Site ineligible to receive a CELR. Execution of this application form does not constitute a CELR, and the undersigned may terminate this application at any time by notifying KDHE BER.

The application and associated fee should be submitted to:

Environmental Liability Release Program  
Attn: Long-term Stewardship Unit Chief  
KDHE Bureau of Environmental Remediation  
1000 SW Jackson, Suite 410  
Topeka, KS 66612-1367  
Phone: 785-296-1673

Name (print or type): \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

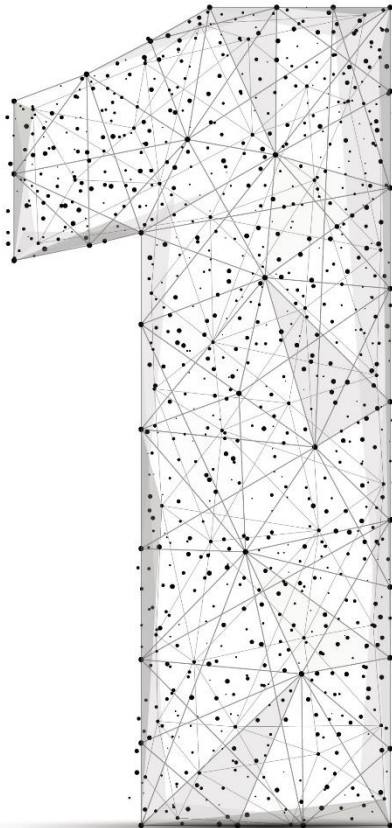
State of \_\_\_\_\_

County of \_\_\_\_\_


This instrument was acknowledged before me on [insert date] \_\_\_\_\_ by [Name of property owner] \_\_\_\_\_ whose identity was proved to me on the basis of satisfactory evidence.

\_\_\_\_\_  
Notary Public

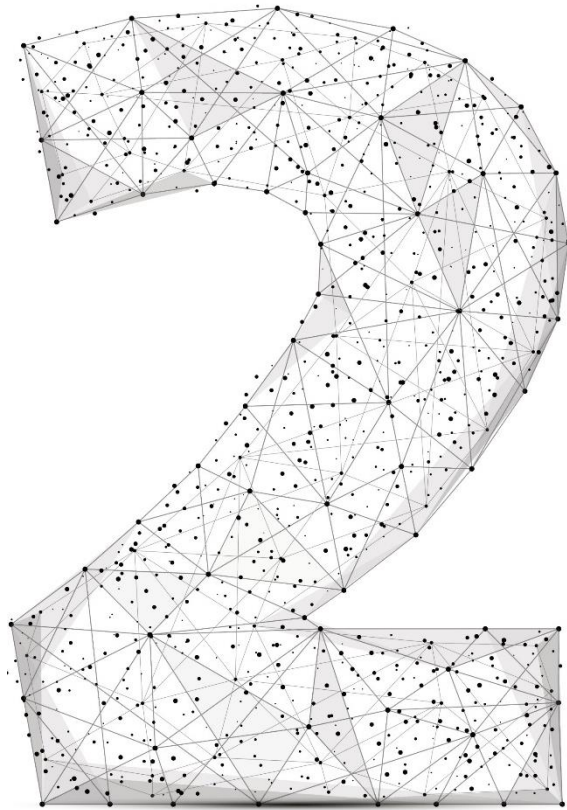
## Property Classifications



### Class I – Prospective Purchasers - \$700

- Phase I ESA Report with title search 
- Phase II or other report to demonstrate contamination
- Straightforward ownership history in addition to current and historical operations being similar in nature
- Affirmation statements in Section 3 of application are all marked and require no explanation

## Property Classifications

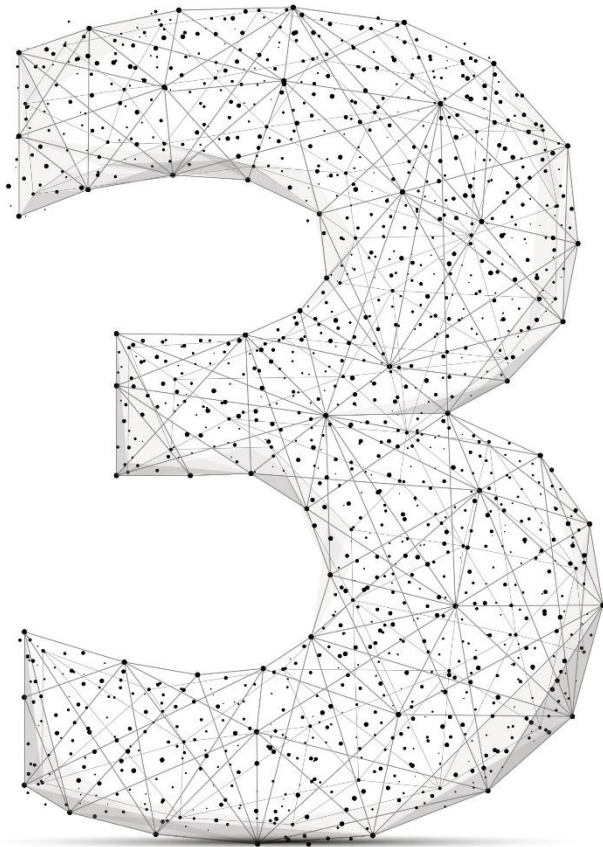


### Class II – Prospective Purchasers or Current Owners - \$1,000

- Phase I ESA Report with title search ←
- Phase II or other report to demonstrate contamination
- Applicant may be current owner (meet previous criteria)
- Ownership history slightly more complex but current and historical operations have been similar in nature
- Affirmation statements in Section 3 of application are all marked and require no explanation



## Property Classifications



### Class III – \$2,000

- No Phase I ESA Report required
- Phase II or other report to demonstrate contamination
- Applicant may be current owner (meets previous criteria)
- Complex ownership history and various facility uses and past operations
- Affirmation statements in Section 3 of application are all marked and require no explanation
- Property may contain multiple, contiguous parcels

## Processing Timeline

- 15 business days to make determination following receipt of **complete** application
  - KDHE will send notice of receipt within 3 to 5 days
  - Majority of CELRs are processed within 5 days of receipt of complete application
- If ineligible, written notice will be provided to the applicant
  - identify specific criteria
  - may appeal within 15 days of ineligible notice – provide supplementary information
  - may request a hearing within 15 days of final ineligibility determination
  - for final ineligibility determinations, refund of application fee (less the amount expended by KDHE to review/process the application) will be issued.

## Certificate Holder - Future Obligations

- Provide reasonable access for future environmental investigations and remediation by KDHE or other party performing activities under KDHE oversight
- Cannot exacerbate or otherwise increase risk posed by contamination associated with the property or interfere with a department-approved remedy on the property
- Comply with all requirements specified in any environmental use control agreements or risk management plans established for the property
- Provide notification to KDHE within 30 days of sale or transfer of the property to which the Certificate Holder is a party and
- Disclose the CELR to any future purchasers of the property until such time as the cleanup levels for unrestricted use have been attained at the property

## Certificate Holder – Not in compliance

- KDHE to provide written notice advising of the conditions/requirements not being met and provide direction and establish a deadline for getting back into compliance
- Certificate Holder will have up to 30 days, or less when more immediate actions are required, to correct non-compliance issues.
- KDHE may revoke the CELR



# Environmental Liability Release

## Thank you/Questions



**Andrea Schiller**

Unit Manager

Long-Term Stewardship & Brownfields

Bureau of Environmental Remediation

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[www.kdheks.gov](http://www.kdheks.gov)